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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm		8663

7590 11/17/2004

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/707,156

Applicant(s)

SCHRAMM ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 & 21-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Upon review of this application, it has been discovered that obvious type double patenting rejections were inadvertently omitted from the Office actions. Accordingly, the Final Rejection mailed 9/29/03 is hereby withdrawn and prosecution is reopened, so that these omitted rejections can be made of record. The Office regrets any inconvenience.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).2

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 5,246,046 and claims 1-11 of Re. 36, 131 in view of Hunter (GB '356), Martindale ('797), Coleman ('884) and Hoeting et al ('870).

Claim 1-14 and 21-25 of the present application differ from the claims of 5,246,046 and Re 36131 in the recitation that the funnel containing container is to hold edible substances. As evidenced by the combination of Hunter and Martindale as further evidenced by Hoeting et al and Coleman, to provide a funnel containing container was well established in the art and well known as a spill proof means for flowable materials, solid or liquid, inedible or consumable. It would therefore have been obvious in view of the art taken as a whole to employ edible materials in the containers of 5,246,046 and Re. 36,131. The art taken as a whole also teaches it would

have been obvious to modify the claims of 5,246,046 and Re 36, 131 and provide a lollipop/handle combination.

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,386,138 in view of Hunter (GB '356), Martindale ('797), Coleman ('884) and Hoeting ('870).

Claims 1-14 and 21-25 of the present application differs from the claims of 6,386,138 in either the content of the container or the particular work piece to be used with the content. The claims of the present application claim either an edible in a funnel containing container or a container capable of containing an edible or the combination with a lollipop to be dipped therein whereas the claims of 6,386,138 recite a funnel containing container with egg coloring system (the egg being a work piece). As evidenced by the art taken as a whole including Hunter, Martindale, Coleman and Hoeting et al, it was well established to provide spill-proof, funnel containing containers for all types of flowable products and it was well established to provide a lollipop as a work piece to be coated. To modify the claims of 6,386,138 and substitute one conventional work piece for another conventional work piece would therefore have been obvious.

Also, upon further review, the claims of the present application have an effective filing date of 11/6/00. That is, the claims of the present application are not supported by any of applicants' previous applications cited on page 2 of applicants' specification. Accordingly, Pat No. 5,246,046, patented 9/21/93 by one of the current applicants is prior art against the current claims. This is because all of the claims recite edible materials, which are not disclosed in any of the previous applications.

The following new ground of rejection is made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (GB '356) in view of Schramm (5,246,046) and Martindale ('797) further in view of Coleman ('884) and Hoeting et al ('870) or, vice versa, i.e. Coleman and Hoeting et al in view of Hunter, Schramm and Martindale, both further in view of applicants' admission of the prior art, Kennedy (4,869,390), Beutlich et al (GB. 1485581), McCombs (1,254,714), Meth (3,464,599) and Patterson (5,105,975).

In regard to claim 1, as evidenced by Hunter, Schramm, and Martindale, it was well established to provide containers with funnels for preventing spilling of flowable solids or liquids which is applicant's objective as well. The claims recite that the material are edible products. Hunter Schramm and Martindale are seen to be general teachings applicable to any flowable product that one wants to prevent spilling. The art taken as a whole teaches that providing a container with a funnel will prevent spilling of a flowable product. Note that Hunter discloses a consumable material such as water. Coleman and Hoeting et al can be relied on to teach edible, solid fluent materials are, of course, well established and Hoeting et al even recognizes the problem that an edible, solid fluent material (like any other fluent material) is subject to spilling. To modify Hunter as further evidenced by Schramm and Martindale and substitute one conventional flowable material for another conventional flowable material to

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prevent spilling would therefore have been obvious. Similarly, employing Coleman, as the primary reference, it would have been obvious to modify Coleman and provide a funnel to reduce the risk of spillage in view of Hunter, Schramm and Martindale teaching adding a funnel to a container as an anti-spill measure and Hoeting et al teaching that edible flowable solids do not act any differently than any other flowable material, solid or liquid. That is, any flowable material by definition is susceptible to flowing and thus spilling if the orientation of the container is changed. Applicant's admission of the prior art (page 21) conforms that spill-resistant containers were well established. Kennedy, Beutlich et al, McCombs, Meth and Patterson are all relied on as further evidence to support applicants' admission of the prior art that spill proof containers are well established in the art. The remainder of the claims are rejected for the reasons given previously in the Office actions mailed 4/1/03 and 9/29/03.

Claims 1-14 and 21-25 are rejected under 35 USC 102 e/103 in view of Hunter (GB '356) in view of Schramm (6,386,138) and Martindale ('797) further in view of Coleman ('884) and Hoeting et al ('870) or vice versa, further in view of applicants' admission of the prior art, Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599) and Patterson ('975) essentially for the reasons given immediately above.

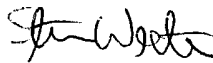
Claims 21 and 23-25 are rejected under 35 USC 112, first paragraph for containing New Matter, for the reasons given in the Office action mailed 9/29/03.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
November 9, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761